

## **TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS**

### **DIVISION 6: SOLID WASTE HANDLING FRANCHISES**

#### **Chapter 3: FRANCHISE.**

##### **Sections:**

- 46.031 Franchise Formation and Terms.
- 46.032 Franchise Fee.
- 46.033 Assignment and Change of Ownership.
- 46.034 Title to Solid Waste.

##### **46.031 Franchise Formation and Terms.**

(a) The award by the Board of a franchise for Solid Waste Handling shall be evidenced by approval and execution of a Franchise Agreement. The Board may award exclusive or non-exclusive Solid Waste Handling franchises in the Unincorporated County, with or without competitive bidding, through individual Franchise Agreements. A Franchise Agreement shall be granted by the Board when it determines that public convenience and necessity are served by the award of the franchise, and where a partially or wholly exclusive franchise is awarded without competitive bidding, that the granting of such a franchise is in the best interests of County residents based on the health, safety and well being of residents in the Franchise Area where the partially or wholly exclusive franchise is awarded. Each Franchise Agreement shall specify the specific Solid Waste Handling services to be provided by Grantee; a different Grantee may be granted a franchise to provide the same, or different, Solid Waste Handling services in the same Franchise Area.

(b) In order to qualify for the award of a franchise, an applicant must:

(1) have, or obtain prior to the approval of the Franchise Agreement by the County, and maintain for the term of its Franchise Agreement a current Health and Safety Permit to the extent such a permit is required under the provisions of Article 2 of Chapter 8 of Division 3 of Title 3 of this Code in order to provide the Solid Waste Handling services to be provided under the Franchise Agreement; and

(2) demonstrate a minimum of three (3) years experience in providing substantially the same type, class and extent of services as those for which the franchise is sought; and

(3) provide to the Director the information which is required of an applicant for a Health and Safety Permit pursuant to Section 33.0825 of this Code.

(c) (1) The terms and conditions by which the Grantee shall be obligated to provide Solid Waste Handling services shall be as set forth in this Division and, with respect to the items set forth in this subsection (c), as set forth in the Franchise Agreement.

(A) The Franchise Area, including any Uniform Handling Area.

(B) The specific Solid Waste Handling services (including without limit the Minimum Diversion Requirement as provided in Section 46.093) to be provided by Grantee, including appropriate operating requirements.

(C) The Total Rates related to the specified Solid Waste Handling services to be provided by Grantee and the method of billing its subscribers.

(2) (A) If the County and the Grantee so agree, the Franchise Agreement may specify the Solid Waste Facility or Facilities to which the Grantee will transport the Solid Waste collected pursuant to Solid Waste Handling services provided under the Franchise Agreement.

(B) If the County and the Grantee so agree, the Franchise Agreement may allow the County to specify a different or additional Solid Waste Facility to which the Grantee will transport the Solid Waste collected pursuant to the Solid Waste Handling services provided under the Franchise Agreement. In such event, the Franchise Agreement may contain a cost per ton mile figure which sets forth the increase in the Grantee's demonstrable costs related to such a change.

(C) If the County and the Grantee so agree, the Franchise Agreement may specify that upon the effective date of the Franchise Agreement the Grantee waives and forgoes any other rights it might have to provide Solid Waste Handling services in other specified portions of the Unincorporated County, including any rights it might otherwise have under Public Resources Code Section 49520 or other law to receive advance notice of the cancellation of any permit or other authorization to provide such services.

(d) (1) The initial term of a Franchise Agreement shall be 7 years. Any extension of a Franchise Agreement shall be 5 years. Notwithstanding the forgoing, the County reserves the right to increase the length of the 7 year initial term or any 5 year extension if it believes that such an increase is in the best interests of the subscribers being serviced by the Grantee under the Franchise Agreement.

(2) A Franchise Agreement shall be automatically extended for successive 5 year terms unless by Board action the Board determines in its sole discretion that the Franchise Agreement shall not be extended. The action to not extend a Franchise Agreement must be taken by the end of the year which is 3 years prior to the end of the initial term (e.g., by the end of the 4th year of a 7 year term), or by the end of the year which is 2 years prior to the end of an extended term (e.g., by the end of the 3rd year of a 5 year extension). If the Board determines that a Franchise Agreement will not be extended, the Franchise Agreement shall expire (unless sooner terminated under the

provisions of this Division) at the end of the then current term.

(e) The Franchise Agreement shall set forth the Total Rate (i.e., the inclusive schedule of rates to be paid to Grantee for Solid Waste Handling services provided to subscribers under its Franchise Agreement). The Total Rate shall be subject to review and adjustment pursuant to the provisions of this Division. If and when adjustments to the Total Rate are made pursuant to the provisions of this Division, the Director shall cause a certification of each such adjustment to be lodged with the County's official copy of the Franchise Agreement. No Total Rate or adjustment to same shall be implemented until approved by the Board or by the Director, as provided in this Division.

(f) Non-performance by Grantee of the terms and conditions contained in this Division or in its Franchise Agreement, or the occurrence of one or more of the events set forth in Section 33.0827 of this Code, shall provide grounds for the loss of or limitation upon the Grantee's right to provide Solid Waste Handling services pursuant to its Franchise Agreement and for the termination of its Franchise Agreement. Grantee shall perform no Solid Waste Handling services under its Franchise Agreement without possessing the required Health and Safety Permit.

(g) Except when otherwise required by applicable state, federal or local law, the terms and conditions of this Division shall prevail over any inconsistent provisions of a Franchise Agreement.

(h) The Grantee under any Franchise Agreement is an independent contractor and not an officer, agent, servant, or employee of County. Grantee is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in any Franchise Agreement shall be construed as creating a partnership or joint venture between County and Grantee. Neither Grantee nor its officers, agents, or employees shall obtain any rights to retirement or other benefits which accrue to County employees.

(i) Grantee shall have the right to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling services pursuant to its Franchise Agreement, so long as it is not in receipt of a written notice revoking permission to pass.

Adopted Ordinance #3670 (1996);

#### **46.032 Franchise Fee.**

Grantee shall pay to the County a Franchise Fee equal to the then current and effective Franchise Fee set forth in the County Schedule of Fees, currently found at Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code. The payment of a Franchise Fee shall not limit the County's ability to establish and levy a business license tax, fees, charges, assessments, penalties, fines, and other requirements for monetary payment by the Grantee to the County. Payment of Franchise Fee shall be made monthly. The Franchise Fee shall constitute a cost which Grantee may recover as a part of the compensation due Grantee under the Franchise Agreement.

Adopted Ordinance #3670 (1996);

#### **46.033 Assignment and Change of Ownership.**

(a) Neither any Franchise Agreement nor any right or privilege granted in any such Agreement shall voluntarily or involuntarily be transferred, sold, hypothecated, sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein (all collectively referred to herein as "transfer" ), pass to or vest in any Person, except the Grantee, either by act of the Grantee or by operation of law, without the prior written consent of the Board. Any attempt by Grantee, or by operation of law, to transfer any Franchise Agreement without the prior written consent of the Board shall be void.

(b) The Franchise Agreement shall terminate on any Change in Ownership of Grantee, unless such Change in Ownership has been consented to, in writing, by the Board prior to the effective date of such Change in Ownership.

(c) The County shall review a request by Grantee that the Board approve a transfer of all or part of Grantee's interest in a Franchise Agreement, or that the County consent to a Change in Ownership of Grantee, using such criteria as it deems necessary including, but not limited to, those listed below. The County shall not unreasonably withhold its consent to the transfer of any Franchise Agreement or to any Change in Ownership of Grantee. In no event, however, will any such transfer or Change in Ownership be approved unless the proposed assignee, or Grantee under its proposed new ownership, as the case may be, is shown to the satisfaction of the Board to meet the qualifications established by this Division for the approval, in the first instance, or retention of a Franchise Agreement.

If the Grantee requests that the County consider and consent to a transfer or a Change in Ownership of Grantee, the Grantee or the proposed transferee, as applicable, shall at a minimum meet each of the following requirements:

(1) The Grantee shall pay the County its reasonable expenses for attorney's fees and investigation costs necessary to determine the suitability of any proposed transferee or proposed new owners, and to review and finalize any documentation required as a condition for approving any such transfer or Change in Ownership.

(2) The Grantee shall furnish the County with independently audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

(3) The Grantee shall furnish the County with satisfactory proof:

(A) that the proposed transferee or the proposed management of the Grantee under the proposed new owner has at least three (3) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Grantee under this Agreement;

(B) that in the last five (5) years, the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) has not received any citations, Notice of Violations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any failure to comply with state, federal or local waste management laws, where such failure either: (i) evidences a pattern of disregard for such state, federal or local waste management laws; or (ii) involves actions which endangered the lives or property of any Person. Grantee shall supply the County with a complete list of such citations, Notices of Violations and censures, if any;

(C) that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) has at all times conducted its operations in an environmentally safe and conscientious fashion;

(D) that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) conducts its solid waste management operations in accordance with sound waste management standards and practices and in full compliance with all federal, state and local laws regulating the collection and disposal of waste;

(E) of the adequate financial strength of proposed transferee or of the Grantee under the proposed new ownership; and

(F) of the ability of the proposed transferee or of the Grantee under the proposed new ownership to obtain and maintain required insurance and bonds.

(d) The County may impose reasonable new conditions of approval on a Franchise Agreement transfer, or consent to a Change in Ownership of Grantee, including, but not limited to, conditions requiring acceptance of amendments to the relevant Franchise Agreement.

Adopted Ordinance #3670 (1996);

#### **46.034 Title to Solid Waste.**

Ownership of Solid Waste shall transfer to Grantee at such time as the Solid Waste is abandoned and discarded by the Solid Waste Handling service subscriber of Grantee in the location provided in Section 33.088 of this Code.

Adopted Ordinance #3670 (1996);